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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,586	06/24/2003	Kevin J. Kwitkowski	038712/264882	1642

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EXAMINER

SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,586

Applicant(s)

KWITKOWSKI ET AL.

Examiner

Lynda M. Salvatore

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/24/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8 directed to a non-woven fabric substrate classified in class 442, subclass 327+.
 - II. Claims 9-12 directed to a process for making a non-woven fabric substrate classified in class 264, subclass various
2. The inventions are distinct, each from the other because:

Inventions of Group I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, staple length fibers can be used to make a carded non-woven fabric.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Raymond Linker Jr. on May 18th, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-12 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Applicant is advised that the reply to this requirement to complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being obvious over Childs et al., US 5,883, 069 in view of Willis et al., US 2003/0119403.

The patent issued to Childs et al., teaches a spunbond non-woven fabric substrate comprising polyester fibers having a denier from 5 to about 8, a basis weight from about .53 to about .59 oz/yd², a thickness ranging from .16 mm to about .23 mm, a tear strength from 4 to about 7 lbs/in² in the cross direction and from about 3.1 to about 6 lbs/in² in the machine direction (Abstract and Column 2, 13-25). Said spun-bond non-woven fabric is suitable for use as dryer activated fabric softening articles (Abstract).

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Childs et al., does not specifically teach continuous filaments made from the claimed polyester homopolymer and polyester binder filaments, however, the ~~patent issued~~ ^{application} to Willis et al., teaches a spunbond non-woven fabric comprising continuous bi-component fibers made from two separate polyesters (Section 0005-0007). Willis et al., specifically teaches a polyester homopolymer such as polyethylene terephthalate and a lower melting polyester binder copolymer such as a copolymer of polyethylene isophthalate (Section 0014). Willis et al., teaches that the copolyester binder component makes up from 2-25 wt. % of the bi-component filament (Section 0017). Though, Willis et al., does not specifically teach two separate filaments it is the position of the Examiner that the bi-component fibers meet all of the chemical limitations presently set forth. In other words, it is the position of the Examiner that bi-component fibers of Willis et al., would produce the same fabric comprising two separate distinct polyester fibers. Willis et al., also discloses forming the non-woven fabric entirely from the bi-component fibers or a mixture of the bi-component fibers and filaments formed entirely from the homopolyester (Section 0007). With regard to claim 6, Willis et al., claims forming a tri-lobal filament (Claim 11). Willis et al., teaches that the bi-component fibers produce spun-bond non-woven fabrics, which exhibit improved physical properties such as tensile strength (Section 0020).

Therefore, motivated by the desire to provide a dryer activated sheet with improved physical properties such as tensile strength it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the spunbond fabric of Childs et al., with the polyester homopolymer and lower melting polyester binder copolymer as taught by Willis et al.

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With specific regard to the claimed basis weight and tensile strength limitations recited in claims 1, 2, 4 and 8, the ranges taught by Childs et al., does not explicitly encompass the claimed ranges. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the basis weight and tensile strength based on desired end use. It has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980)


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 23, 2005
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